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Testimony of Elton B. Harvey, III  
Real Property Section, Chair

### **OPPOSE**

Senate Bill 756, "An Act Requiring a State-Wide Standardized Contract Form  
for the Sale of Residential Real Property."

Insurance Committee  
February 26, 2015

My name is Elton B. Harvey, III. I am the Chair of the Executive Committee of the Connecticut Bar Association Real Property Section and I am before you today on behalf of the Section and the Connecticut Bar Association to request your support of opposing Senate Bill 756 "An Act Requiring a State-Wide Standardized Contract Form for the Sale of Residential Real Property".

The bill would require the Commissioner of Consumer Protection to prescribe the form of a standardized contract to be used state-wide for the sale of residential real property. The Connecticut Bar Association and the Real Property Section oppose the bill for several reasons.

It is not the proper role of government to infringe on people's freedom to contract by mandating the form of agreement to be used by two parties who are free to contract. There is no inequity in bargaining power between a buyer and seller of real estate. Contracts for the purchase and sale of residential property are not contracts of adhesion; you have consumers on both sides of this type of transaction.



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There is no way a prescribed standard contract can responsibly and adequately fit all the possible permutations involved in residential purchases and sales, such as new construction, short sales, sales with leaseback provisions, unimproved land, approval contingencies, probate contingencies, condominium or planned community properties, to name a few. A basic tenet of real property law is that no two pieces of real property are alike. Real property is not a commodity; a “prescribed” one size fits all form for the buying and selling of it is completely inapposite to real property law.

Real estate lawyers have been protecting the rights of their clients in these transactions for generations. While parties to these transactions are not specifically denied the opportunity to seek the guidance of counsel when buying or selling a home, the use of a standardized contract that is published to “all municipal town clerks, the Connecticut Association of Realtors, Inc., and any other person or institution that the commissioner believes would aid in the dissemination and distribution of such form” in other words, non-practitioners, may actually mislead consumers into believing that their interests are adequately protected by such a form. Also, distributing this form with a state imprimatur will necessarily give those receiving the form and consumers a false sense of security that their needs are being addressed when, in fact, their needs and priorities and the issues and peculiarities of the particular property may and most likely will require additional contract negotiation and informed consent based on advice from a licensed attorney.



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Though we are not sure of the intent behind the proposed legislation, to the extent there is a concern about the quality of contracts used in residential sales, the Committee may be interested to know that the Real Property Section of the Connecticut Bar Association has a standing subcommittee which has promulgated a basic form contract for use by its membership. That form was approved for use by the Real Property Section at its September 18, 2013 meeting. The approved form is designed as a base form only, from which a licensed practitioner can modify and tailor the final contract to meet the needs of his or her client and the specific facts relative to the subject property and proposed use or development thereof. The form has not been adopted by the Connecticut Bar Association and the subcommittee continues to work towards a form that is acceptable to all members of the Bar and can be voluntarily adopted as a basic form contract. The work already put in by the Real Property Section should hopefully be seen by the Committee as an answer to any concerns as to the ready availability of quality contracts for residential transactions.

Thank you for the opportunity to be heard in connection with this matter.